IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 461 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NARESHKUMAR ISHVARLAL BARMEDA - Appellant(s)
Versus
MARUBHA PRAGJI JADEJA & 1 - Defendant(s)

==========

Appearance :

MR MEHUL S SHAH for Appellant(s) : 1,MR SURESH M SHAH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MR YOGESH S LAKHANI for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 06/03/2007

ORAL JUDGMENT

This is an appeal filed by the original claimant. He has made only one grievance against the judgment and award of the Motor Accident Claims

Tribunal [Aux.], Kutch at Bhuj dated 18/10/1997 made in M.A.C. Petition No. 74 of 1990 that the compensation awarded by it is inadequate since no amount has been paid under the head of loss of prospective income. The appellant had suffered injuries at the time when he was standing at the bus stand on 27/8/1989 at Bhuj. Driver of bus bearing registration No. GRU 8759 took the bus in reverse without taking care to see whether any-one was standing in the way of bus. While doing so, he lost the control over the steering and the appellant was sandwiched between the bus and the wall. Fortunately he survived but he sustained serious injuries on head, in the chest and other parts of the body including fracture on the hand. He, therefore, later on preferred claim petition under the provisions of the Motor Vehicles Act [hereinafter referred to as 'the Act'] for obtaining compensation.

2. One of the averments made before the Tribunal was that he wanted to be Engineer, but because of the accident he could not secure good marks in the examination of 12th Standard and could not get admission as per his desire. He, therefore, claimed a sum of Rs.1 lac by way of compensation.

2.1. The claim was resisted by respondents by denying the averments made in the petition.

2.2. At the hearing, appellant examined himself at Exh. 19. In the evidence he reiterated the statements made in the petition. He also examined the Medical Officer to substantiate his case regarding injuries. On the basis of the material produced before it, the Tribunal held that the accident occurred due

to the negligence of respondent no. 1 i.e., the bus driver. The Tribunal also determined the compensation at Rs.32,000/- and awarded the same together with interest @ 15% p a and proportionate costs. Since the appellant is not satisfied with the quantum of compensation, he has preferred this appeal.

3. I have heard Mr. Mehul S Shah, learned advocate for the appellant and Mr. YS Lakhani, learned advocate for the respondents. It is submitted by Mr. Shah that the aspects with regard to future loss of income has not been considered by the Tribunal and, therefore, injustice has been caused to the appellant.

3.1. As against that, Mr. Lakhani has supported the judgment and has submitted that there is no need to interfere with the amount determined by the Tribunal.

4. So far as the factum of accident and the negligence of respondent no. 1 are concerned, there is no dispute. As already stated above, the whole controversy is with regard to quantum of compensation on the ground that no compensation for prospective loss of income is awarded. There is evidence on record to show that appellant was a bright student and he opted to pursue he career as an Engineer. He has stated that because of the accident in his crucial year of studies, he could not get admission in the necessary course and he had to rest satisfied by prosecuting the diploma course. There is evidence that in diploma, he secured 1st class. Therefore, it is obvious that he was a bright student and but for the accident he would have achieved his goal and made his

career as per his desire. Unfortunately that has not happened. Of-course there is no evidence on record to show what loss he would suffer because of his unfulfilled desire. He has stated that as an Engineer he would have earned about Rs.4,000/- to Rs.5,000/- per month, but unfortunately he has not stated what loss he would suffer since he did not become the Engineer. But the fact remains that because of the injuries sustained in the accident, he could not pursue the career of his dream. For that notional amount is required to be awarded. Considering the overall circumstances of the case and the quantum already awarded by the Tribunal, in my opinion, additional sum of Rs.10,000/- is required to be awarded to him together with interest as determined by the Tribunal from the date of application till realization with the proportionate costs. Hence, this appeal is partly allowed. The respondents are directed to pay additional sum of Rs.10,000/- together with interest @ 15% from the date of application till realization and proportionate costs. The amount to be deposited within four months from the date of this judgment.

R & P to be re-transmitted to the concerned Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.